meantime and therefore it follows that the original co-owners in 1936 were Siti Hadijah bte. Talib and Masuan bin Talib.

The plaintiff deposed that he bought the whole of the joint owners' interests in the said land in 1943 for the sum of $3,000 (Japanese dollars) per acre. The transfer was not registered owing to the difficulty of registration during the Japanese occupation but Naib Mohd. bin Haji Nawawi, the Asst. Penghulu of Mukim VIII, attended at the lawyer's office with the plaintiff, Siti Hadijah bte. Talib and Masuan bin Talib and witnessed the execution of the transfer. The Naib gave reasons as to why Masuan bin Talib was selling. He said that he told the Naib that he wanted to go back to Indonesia and in fact the Naib had not seen him since although the plaintiff deposed that his brother was in touch with him in Indonesia.

After the reoccupation the plaintiff got Siti Hadijah to execute a transfer of her undivided half share in the said land the subject of the transfer for value in 1943 and this he subsequently sold to a Chinese Tor Cheng Teng in 1954. The plaintiff was unable to do anything about Masuan bin Talib's undivided share as he was apparently trying to get hold of him in Indonesia. It was not disputed the plaintiff had been in occupation of this piece of land since 1943. At some time or other Siti Hadijah apparently made an application to the Collector under section 42 of the Johore Land Enactment seeking to have the title rectified. I trust I may be forgiven if I describe the subsequent enquiry held by the Collector as extremely sketchy. There is no date, it does not appear what land is referred to, and even the certified true copy is not dated as to its authentication. I set out the evidence:

"Siti Hadijah S.S.

My husband Hassan died about 8 years ago at Betong 15th Mile and I have lost the death certificate. The land is near 15th Mile of Kluang planted with mature rubber perhaps worth $1,200. There is no encumbrance and no shop debts. I paid belanja mati $300, which I borrowed from my father; I have paid this back. The only heirs are myself and his son Murwan who is still at school. I wish to be registered jointly with Murwan.

Naib Jambol S.S.

I know of the death of this man and shared in kenduri, etc. The heirs are as stated.

Order (Siti Hadijah bte. Talib
Order (Murwan b. Hassan.
to be registered."

On that evidence apparently Murwan bin Hassan was registered as joint owner of the land with his mother. This enquiry does not account for or attempt to deal with the fact that the piece of land about which the suit is concerned belonged to Siti Hadijah and her brother Masuan bin Talib. That such a person as Masuan bin Talib existed was deposed to by both the plaintiff and Naib Mohd. bin Haji Nawawi. Although his existence was denied by both the defendants they called no evidence in support of their contention.

I do not believe either of the two defendants in respect to non-existence of Masuan bin Talib or their denial that Siti Hadijah had such a brother and I am quite satisfied that there was such a person. It is most unlikely that a mistake should arise in both the first name and the father's name in a document so important to a Malay as a title to land. I would have been more inclined to believe the first defendant had the original name been Masuran bin Hassan but I do not believe that there is likelihood of a double error nor is there any reason to disbelieve Naib Mohd. bin Haji Nawawi. That there was an out and out sale of this property to the plaintiff would appear to be borne out by the fact that he has enjoyed uninterrupted peaceful possession of the property for the last 18 years. In my view the evidence of the plaintiff and Naib Mohd. are true and the plaintiff is the undoubted owner of an undivided share of the said land with Tor Cheng Teng.

The plaintiff is therefore entitled to a declaration in the terms of the amended statement of claim except that the allegation of fraud in para. 3 must be struck out. The Registrar of Titles must correct his register accordingly.

The defendants must pay the costs.

Order accordingly.

Solicitors: *Pillai & Co.*

ONG YAP CHANG v. PUBLIC PROSECUTOR

[A. Cr. J. (Adams J.) December 3, 1961]

[Muar — Criminal Appeal No. 69 of 1961]

Gaming — Tikam Ekor Lottery — Assisting in management of — Common Gaming Houses Ordinance, 1953, s.4(1)(c) — Expert evidence on exhibits — No reasons for opinion — Whether Magistrate's finding of fact justified — Observation on confiscation of money found on accused.

The accused was stopped while riding his bicycle in Muar Town and certain pieces of paper dropped from his possession. He was charged under section 4(1)(c) of the Common Gaming Houses Ordinance for assisting in the management of the Tikam Ekor Lottery. A police expert on the Tikam Ekor Lottery deposed *inter alia* that the pieces of paper which the accused had dropped were staking slips in a 10,000 character lottery without giving reasons for arriving at those conclusions.

Held: as the expert had given no reasons for his conclusions, the learned Magistrate was in no position to judge whether the evidence of the expert was in fact acceptable. There was therefore no evidence on which he came to his finding that the exhibits were in fact a record of stakes. Appeal must therefore be allowed. *Choo See Kean* v. *Public Prosecutor* (1) explained and followed.

Cases referred to:—

(1) *Choo See Kean* v. *Public Prosecutor* [1959] M.L.J. 213.

(2) *Sim Ah Oh* v. *Public Prosecutor* [1962] M.L.J. 42.

CRIMINAL APPEAL.

W. H. Sault for the appellant.

Hamzah bin Dato Abu Samah (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Adams J.: This is an appeal by the appellant who had been convicted by the learned President, Sessions Court sitting as Magistrate at Muar of assisting in the management of the *Tikam Ekor Lottery* contrary to section 4(1)(c) of the Common Gaming Houses Ordinance, 1953. There were many grounds of appeal, but Mr. Sault very wisely confined himself to one. I said I would allow the appeal but that I would give my reasons later.

The bare facts were that the accused was stopped while riding his bicycle in Muar Town and was stated to have dropped the exhibits P.2(a), (b) and (c) when he was stopped by the Police. These exhibits consist of minute pieces of scrap paper on which figures appear. Police Inspector Chew Ban Kee, an expert on the *Tikam Ekor Lottery*, deposed as follows:—

"I have been giving expert evidence *re* 10,000 character lottery and my evidence has been accepted by Johore Courts. I have examined Exs: P2(a), (b) and (c). P2(a) is a staking slip *re* 10,000 character lottery; P2(b) also staking slip containing 3 tickets and P2(c) also relates to big and small 10,000 character lottery containing 40 tickets depending on the draw on 23.7.61 which was a Turf Club meeting at Penang — i.e. 1st Penang Club race. I estimate the amount of stakes in the 3 exhibits $96. A person in possession of Exs. P2(a), (b) and (c) is a collector in my opinion."

It will be seen therefore that he does not explain how he comes by this opinion. The exhibits certainly do not look anything like the record of stakes shown in the book *Gambling Games in Malaya* by Dobree which is a recognized authority under section 24 of the Ordinance. Nor does he explain how one of the tiny exhibits contain 40 tickets. It may well be that the figures indicate that 20 bets have been placed against each of the two numbers. But it is for him to say so not for the Court to guess. Nor is there any explanation as to how he comes to the opinion that the record of stakes shows bets amounting to $96. That being the case, the learned Magistrate was in no position to be able to judge if the evidence of the expert was in fact acceptable. After all it is the learned Magistrate who is the person who has to decide whether or not the exhibits are or are not what the expert says they are, and to do this he must be able to see how the expert came by his opinion. In his otherwise excellent grounds of judgment the learned President finds as a fact that the exhibits are in fact a record of stakes, but he does not say why. The *Choo See Kean case* [1] emphasises the necessity for this. The learned Judge makes it clear that the evidence of the expert must be such that it enables the Magistrate to come to a decision. The evidence of the expert here does not do that. It is an *ex cathedra* pronouncement that the exhibits are record of stakes. This is probably due to lack of experience on the part of the prosecuting officer. The prosecuting officer must elicit the reasons for the opinion of the expert unless the document speaks for itself. When the reasons for the expert's opinion are given the learned Magistrate in his grounds of decision can say, 'I found as a fact that the exhibits were record of stakes in the *Tikam Ekor Lottery*, because from the evidence of the expert it is clear that the reasons that he gives for saying so are clear and unequivocal,' and no one could quarrel with him. The learned Magistrate can go further (again on the authority of *Choo See Kean's case*) and use his own knowledge gained in previous cases, and add that knowledge to the evidence of the expert by saying that the exhibits are identical to those used in other cases relating to the carrying on of the *Tikam Ekor Lottery* which confirms him in the opinion that the evidence of the expert is reliable.

I have dealt with this more fully in the case of *Sim Ah Oh* v. *Public Prosecutor* [2] and I do not want to repeat myself. The appeal must be allowed and the conviction quashed, any part of the fine if paid must be refunded, and the sum confiscated from the defendant also returned to him.

I think I should also say that the learned Magistrate ordered all the money on the defendant to be confiscated, some $496.50 although the evidence shows that only $96 was attributable to the lottery, and only that sum should have been confiscated. Section 407 of the Criminal Procedure Code only applies to property regarding which an offence has been committed. There was no evidence to show that the balance of $400.50 was connected with the commission of any offence.

Appeal allowed.

TAN WANG KENG v. PUBLIC PROSECUTOR

[A. Cr. J. (Adams J.) December 7, 1961]

[Johore Bahru — Criminal Appeal No. 30 of 1961]

Customs and Excise — Attempted export of opium — Dangerous Drugs Ordinance, 1952, ss.5(1) and 33 — Whether mens rea necessary — "Export" — Meaning of.

Appellant whilst driving his car, and after he had passed the customs station at Johore Bahru en route to Singapore, was stopped on the causeway in Johore territory and 270 lbs. of raw opium were found in his car. The learned President following the decision in *Public Prosecutor* v. *Lee Tuah Suah* [1] amended the charge from one of exporting to one of attempting to export under the Dangerous Drugs Ordinance, 1952 on the ground that before there could be any export, the goods must actually leave the territorial limits of the Federation.

It was argued for the appellant that as he was unaware of the existence of the opium in his car, he could not be found guilty of the offence charged because *mens rea* is a necessary element to the commission of an attempt to commit an offence.

Held: section 5 of the Dangerous Drugs Ordinance imposes an absolute prohibition against export of raw opium without licences and the absence of knowledge of the drug is no defence. Though in the normal meaning of the word "attempt" there must be the *actus reus* and the *mens rea*, it is not illogical to hold that where there is an absolute prohibition against the doing of an act, there may also be an absolute prohibition against the making of an attempt, without a requirement for *mens rea*. The appellant was therefore guilty of attempting